Guidance for unsuccessful applicants who may initiate an appeal against the decision on the ground of a denial of procedural fairness. This document is to be read in conjunction with the University’s promotion policy.

Purpose of this document

1. The University has adopted a ‘Policy for the promotion academic staff to lecturer, or senior lecturer or associate professor’ (Policy) which sets out the University’s policy and procedure in the promotion of academic staff. A copy of the current Policy may be obtained from Human Resources or from http://apps.uws.edu.au/uws/policies/ppm/doc/000060.html

2. This document:
   a) is intended to provide some guidance to unsuccessful applicants about procedural fairness in the promotion process;
   b) does not form part of the Policy and is for guidance purposes only;
   c) is not intended to form part of the contract of employment of any member of staff; and
   d) is not a substitute for legal or professional advice.

3. The University may change the terms of this document from time to time and may withdraw or renew it.

Applicant’s right of appeal from a decision of the Promotions committee

4. Unsuccessful applicants who believe that they have been treated unfairly during the Promotion rounds may appeal against the decision of the Promotions Committee on the grounds that:
   (a) the Promotions Committee failed to comply with the procedural requirements of the Policy; or
   (b) there was a failure to observe the requirements of procedural fairness during the Committee process.

5. The remainder of this document explains what procedural fairness is and where failures to observe the requirements may occur.

What is procedural fairness?

6. Procedural fairness is the application of the principles of natural justice to the decision-making powers of administrators involved in the promotions process. It is important to understand that procedural fairness does not give applicants absolute rights - for example to an oral hearing – but is about the application of the principles to each particular case.

7. In practice, the question of what is a fair procedure may change depending upon the facts and circumstances of any given case.

8. Procedural fairness balances a flexible application of the principles of natural justice against the need to achieve certainty, predictability and fairness for applicants.
What are the principles of natural justice?

9. Some of the principles which may be relevant to the issue of procedural fairness in the promotion process are set out below. This list is not exhaustive.

10. The principles include:

   a) Whether an applicant has been given a reasonable opportunity to apply for promotion;

   b) Whether an applicant has been given a reasonable opportunity to be considered for promotion;

   c) Whether decision-makers in the promotion process are unbiased;

   d) Whether consideration of applicants for promotion has been limited to the notified or other relevant criteria for the post;

   e) Whether unlawful or irrelevant factors have influenced the outcome of an application;

   f) Whether reasons for decision have been provided to applicants who request to know why their application has been unsuccessful; and

   g) Where reasons are provided to applicants, whether those reasons are reasonable and have some basis in fact.

Application of principles

11. Procedural fairness applies at all stages of the promotions process. Some examples of the stages at which issues may arise are set out below.

12. Application stage – an applicant’s opportunity to be considered for a promotion will depend upon reasonable notice being given of the opportunity to apply – what is reasonable notice will depend upon the circumstances. The opportunity to be considered also requires that the qualifications, aptitude competence or experience for the post are specified.

13. Decision-making stage – the existence of the Promotions Committee established under the Policy and its composition are subject to the requirements of procedural fairness. It is unlikely that a member of the Committee would be biased simply because an applicant is well known to that member.

14. Not all applications will require an interview – again, this is a question of fact and circumstances in each case.

15. Basis of decision – the factors forming the basis of a decision by the Promotions committee must not constitute unlawful discrimination. Prohibited grounds include but are not limited to sex, race, disability, age, etc.

16. Further a decision should not be based on evidence of spent convictions.

17. Whether the basis of a decision by the Promotions Committee is unreasonable rather than unlawful will depend upon the facts and circumstances of each case.
18. An applicant’s appeal should not be based on grounds of procedural fairness which are trivial, vexatious or not in good faith.

From MintersEllison 2001

_For further information in relation to this document please contact Maxine Lacey Ext 1460, Social Justice Unit_